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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

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SEP 2 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re )  
 )  
Amendment of 47 CFR §73.202(b), ) MM Docket No. 97-154  
FM Table of Allotments ) RM-9116  
(Newaygo, Michigan) )

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**COMMENTS IN SUPPORT OF  
NOTICE OF PROPOSED RULEMAKING**

Robert R. Moore, Jr. (Moore), by his attorney, hereby respectfully submits these Comments in support of the Commission's "Notice of Proposed Rulemaking", DA 97-1422, 12 FCC Rcd --, released July 11, 1997, to amend its FM Table of Allotments, 47 C.F.R. §73.202(b), in the following respect:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
<b>Newaygo, Michigan</b>	- -	<b>223A</b>

In support whereof, the following is shown:

1. **Preliminary Statement.** Moore filed the "Petition for Rulemaking" in this proceeding, and hereby incorporates by reference all matters stated in said "Petition for Rulemaking".

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List ABOVE

*24*

2. Statement of Interest. In the event that Channel 223A is allocated to Newaygo, Moore will file an application with the Commission for a construction permit for a new FM Broadcast Station on Channel 223A at Newaygo. In the event that such application is granted, Moore would construct and operate the resulting FM station.

3. Allocations Matters Not Known at Time of Filing "Petition for Rulemaking". The undersigned engaged DataWorld of Bethesda, Maryland to prepare a study of Channel 223A and adjacent channels a few days before the "Petition for Rulemaking" was filed. Because it sometimes takes one month for applications filed with the Commission to be entered into the FM data base, our showing in June of this year did not include the application of Great Lakes Broadcast Academy, Inc. (GLBA) for a new FM educational allocation on third-adjacent channel 220 at Rogers Heights, Michigan, File No. BPED-970515MI. GLBA proposed a Class C3 operation with facilities of 21 kilowatts and antenna height 4 meters above average terrain, from a site a coordinates 43-37-42, 85-29-04.

4. As a Class C3 allocation, our calculations show that the GLBA application at Rogers Heights is 26.098 miles (41.99 kilometers) from the reference coordinates given by

the Commission for the Channel 223A allocation at Newaygo, 43-22-12 and 85-51-49. Section 73.207 of the Rules requires a 42 kilometer (26 mile) separation between third-adjacent channel stations where one is a Class A and the other is a Class C3; the same rule requires a 31 kilometer (19 mile) separation where both third-adjacent channel stations are Class A facilities.

5. The Commission's Audio Services Division returned the GLBA application as unacceptable for filing on August 14, 1997 (see Exhibit A); however, the letter ruling left the door open for GLBA to re-file its application as a Class A facility. However, in the event that, through a "daisy chain" caused by counter-proposals in this docket, the Rogers Heights Channel 220A proposal would be deemed "mutually-exclusive" with the proposal for Channel 223A at Newaygo, the Commission should consider that a cursory investigation by the undersigned with employees in the Mecosta County, Michigan courthouse in Big Rapids, Michigan revealed that Rogers Heights is neither an incorporated city or town, does not have a separate population listing, but rather is part of Mecosta Township, which includes the community of Stanwood, Michigan. Rogers Heights appears to be a place name given to the land areas adjacent to Rogers

Dam on the Muskegon River in Mecosta County, Michigan. The nearest post offices to Rogers Heights are in Big Rapids (the county seat, zip code 49307) and in Stanwood (zip code 49346). Indeed, a search of a telephone directory available on the internet on-line service "Yahoo" found just five entries with the name "Rogers Heights"; of those, one was located in Grand Rapids, some 40 miles to the south; with respect to the others, the city and state given was "Big Rapids, MI 49307" (see Exhibit B).

6. It appears therefore that Rogers Heights is not a community for licensing purposes. See 47 U.S.C. §307(b); **Coker, Alabama**, 43 Fed. Reg. 26082, 43 RR 2d 190, 193 (1978); **FM Table of Assignments, Naples, North Naples and Immokalee, Florida**, 42 Fed. Reg. 63887, 41 RR 2d 1539 (1977); **FM Table of Assignments, Vimville, Mississippi**, 48 Fed. Reg. 56613, 55 RR 2d 256 (1983).

7. Thus, assuming *arguendo* this proceeding involves a Section 307(b) comparison between Newaygo and Rogers Heights, Newaygo, which is an incorporated city of long standing with a municipal government, schools, churches, a business community and local industries, would be entitled to a preference as a matter of law pursuant to Section 307(b).

**WHEREFORE,** Robert R. Moore, Jr. urges that the Commission allocate FM Channel 223A to Newaygo, Michigan.

Respectfully submitted,

**ROBERT R. MOORE, JR.**

By

A handwritten signature in dark ink, appearing to read "D. Kelly", is written over a horizontal line.

Dennis J. Kelly  
(D. C. Bar #292631)  
His Attorney

LAW OFFICE OF DENNIS J. KELLY  
Post Office Box 6648  
Annapolis, MD 21401  
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September 2, 1997

**FEDERAL COMMUNICATIONS COMMISSION**  
**1919 M STREET NW**  
**WASHINGTON DC 20554**

**MASS MEDIA BUREAU**  
**AUDIO SERVICES DIVISION**  
**TECHNICAL PROCESSING GROUP**  
**APPLICATION STATUS: (202) 418-2730**  
**HOME PAGE: www.fcc.gov/mmb/asd/**

**PROCESSING ENGINEER: GEORGE H. GWINN**  
**TELEPHONE: (202) 418-2740**  
**FACSIMILE: (202) 418-1410**  
**MAIL STOP: 1800B3**  
**INTERNET ADDRESS: ggwin@fcc.gov**

**AUG 14 1997**

Great Lakes Broadcast Academy, Inc.  
P. O. Box 334  
Stanwood, MI 49346

**Re: NEW(FM); Rogers Heights, MI**  
**Great Lakes Broadcast Academy, Inc.**  
**BPED-970515MI**

Dear Dr. McCluskey:

The staff has under consideration the above-captioned application filed by Great Lakes Broadcast Academy, Inc. ("GLBA") for a new noncommercial educational FM station to serve Rogers Heights, MI. For the reasons stated below, the application is unacceptable for filing and will be returned.

**Prohibited Short Spacing - Application Short-spaced to Station WKKM**

The proposed facility is in violation of 47 CFR § 73.507(a) which requires that any application for a new station to operate on channel 218, 219, or 220 comply with the minimum distance separation requirements specified in 47 CFR § 73.207(a). Specifically, the proposed facility is located 66.1 kilometers from WKKM, Harrison, MI operating on Channel 221A while the minimum distance separation required by § 73.207 is 89 kilometers.<sup>1</sup> As a result, the proposed facility does not comply with § 73.507(a) and therefore, the application will be returned.

**Prohibited Overlap - Application Conflicts with Application BPED-970404ML**

GLBA's application is in violation of 47 CFR § 73.509. Specifically, the proposed facility is predicted to cause and receive prohibited overlap with American Family Association's application BPED-970404ML, Hesperia, MI on first adjacent Channel 219C2. If there were no other acceptability defects, then the applications would be considered mutually exclusive.<sup>2</sup>

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<sup>1</sup> If GLBA were to reduce the proposed class to "A" by reducing the effective radiated power, and request a 47 CFR § 73.215 contour protection grant, then the proposed facility would be acceptable for filing.

<sup>2</sup> The predicted 60 dBu protected service contours overlap. Therefore, one, or both, proposal(s) must reduce ERP/HAAT, change site location, or change the requested channel to second- or third-adjacent to eliminate the mutual exclusivity or the applications would be designated for hearing.

### **Application Deficiencies**

Applications for FM Stations to operate on Channels 210-220 (inclusive) must be filed on FCC Form 340, Application for Construction Permit for Noncommercial Educational Broadcast Station. However, GLBA submitted the engineering data for the proposed facility on Section V-B from FCC Form 301. As a result of not using the Section V-B from FCC Form 340, GLBA omitted the following required information applicable only to NCE-FM proposals:

1. The application did not provide a showing that there would be no prohibited contour overlap with a co-channel or adjacent channel NCE-FM station, construction permit, or application as required by 47 CFR § 73.509.
2. The application did not provide a showing that there would be no TV Channel 6 interference or, if interference was predicted to occur, that compliance with 47 CFR § 73.525 would be assured.

In addition, the engineering data submitted in the application contained many inconsistencies and omissions. The following is a list which references the item numbers in Section V-B as filed in the application:

5. The FAA should be notified. The elevation above mean sea level of the top of the proposed antenna structure is greater than the imaginary surface extending outward and upward from Cain Field, which was acknowledged in Item 6.
7. (a) The height of 30 meters above ground level given in 7.(a)(2) differs from the 35 meters shown in Exhibit 01, antenna sketch. A correction will change 7.(a)(3) also.
13. As addressed above, the proposal does not satisfy the requirements of 47 CFR § 73.207. The answer is "no" and the additional exhibits must be provided.
16. The required map was not included. The 3.16 mV/m predicted contour was neither described nor shown. A map of more suitable scale is required to show the necessary details.
17. The area served is understated because the incorrect HAAT was used. (See 19.)
19. No documentation was provided to support the values in the table for height above average elevation and predicted distances to the 3.16 and 1.0 mV/m contours along each of the eight radials. The average of the eight radial values for HAAT does correctly equal the (4) meters shown in Item 7 (b) (3). However, the values in the "Predicted Distances" columns do not reflect using the 30 meter minimum for height above terrain along each radial as required by 47 CFR § 73.313(e).

20. When the first answer is "no" then a statement, with full knowledge of the extent of the requirements, is necessary to demonstrate that the applicant will not cause environmental harm. This includes, but is not limited to, the requirements to comply with FCC radiofrequency radiation exposure guidelines. The proposal to transmit with 42 kW (combined H+V) and a radiation center only 24 meters above the ground level would produce non-ionizing radiofrequency radiation nearly three times the maximum level allowed by 47 CFR § 1.1310. The applicant is required to demonstrate compliance with environmental impact criteria.

#### **Antenna Structure Registration Required**

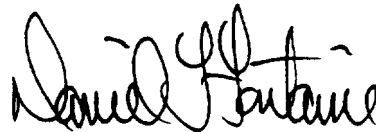
Pursuant to 47 CFR § 17.4(a)(1), as modified by the *Report and Order* in WT Docket 95-5, 61 FR 4359 (1996), any proposed antenna structure or alteration of an existing antenna structure must be registered with the Commission prior to construction or alteration. The antenna structure included in the application must be registered by filing Form 854, Application for Antenna Structure Registration, with the Commission's Support Services Branch (SSB) of the Wireless Telecommunications Bureau's Customer Services Division in Gettysburg, Pennsylvania. Upon registration, written notification (including the tower registration number) must be submitted to the Audio Services Division (ASD). No filing fee is required. For your convenience, a copy of FCC Form 854 is enclosed.

#### **Conclusion**

In light of the above, application BPED-970515MI is unacceptable for filing and IS HEREBY RETURNED. This action is taken pursuant to 47 CFR § 0.283.

Under the Public Notice entitled "Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications," FCC 84-366, released August 2, 1984, the Commission indicated that it would reinstate applications nunc pro tunc where the original application was dismissed and where a relatively minor curative amendment was filed within thirty days. Please note that any amendment must be submitted to the Secretary of the Commission in triplicate and signed in the same manner as the original application using the FCC FORM 340.

Sincerely,

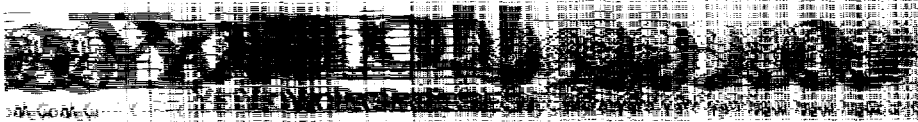


Daniel J. Fontaine  
Supervisory Engineer  
Audio Services Division  
Mass Media Bureau

#### **Enclosures:**

Application BPED-970515MI  
FCC FORM 340  
FCC FORM 854



EXHIBIT B**Search Address :**

<b>Business Name</b>	<b>Address</b>	<b>Phone</b>	<b>Directions</b>	<b>Maps</b>
<b>Rogers Heights Christian Churc</b>	Park Road Rogers Hts, Big Rapids, MI 49307	616-796-7357	<a href="#">Drivelt!</a>	<a href="#">MapIt!</a>
<b>Rogers Heights Service Center</b>	10495 Northland Dr, Big Rapids, MI 49307-9290	616-796-0713	<a href="#">Drivelt!</a>	<a href="#">MapIt!</a>
<b>Rogers Heights Shop N Go</b>	10612 Northland Dr, Big Rapids, MI 49307-9444	616-796-7740	<a href="#">Drivelt!</a>	<a href="#">MapIt!</a>
<b>Rogers Heights Greenhouse</b>	20010 11 Mile Rd, Big Rapids, MI 49307-9284	616-796-4577	<a href="#">Drivelt!</a>	<a href="#">MapIt!</a>
<b>Rogers Heights Christian Reformed Church</b>	3025 Michael Ave S, Grand Rapids, MI 49509-2761	616-532-3174	<a href="#">Drivelt!</a>	<a href="#">MapIt!</a>

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**CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing "Comments" were served by first-class United States mail, postage prepaid, on this 2nd day of September, 1997, upon the following:

Great Lakes Broadcast Academy, Inc.  
Post Office Box 334  
Stanwood, MI 49346

A handwritten signature in cursive script, appearing to read "D. Kelly", written over a horizontal line.

Dennis J. Kelly